

NOTICE OF PROPOSED RULEMAKING

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

PREAMBLE

<u>1. Articles, Parts, or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 1	New Article
R16-4-101	New Section
R16-4-102	New Section
R16-4-103	New Section
R16-4-104	New Section
R16-4-105	New Section
R16-4-106	New Section
R16-4-107	New Section
R16-4-108	New Section
R16-4-109	New Section
R16-4-110	New Section
R16-4-111	New Section
R16-4-112	New Section
R16-4-113	New Section
R16-4-114	New Section
R16-4-115	New Section
R16-4-116	New Section
R16-4-117	New Section

2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 42-16154(C)

Implementing statute: A.R.S. §§ 42-16157, 42-16158, and 42-16159

3. Citations to all related notices published in the register as specified in R1-1-409 that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening XX A.A.R. XXXX August XX, 2020

4. The agency's contact person who can answer questions about the rulemaking:

Name: George Shook

Address: 100 N 15th Ave, Suite 130, Phoenix, AZ 85007

Telephone: (602) 364-1600

Fax: (602) 364-1616

E-mail: gshook@sboe.az.gov

Website: <https://sboe.az.gov>

5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The State Board of Equalization (SBOE) is required under A.R.S. § 42-16154(C) to make rules of procedure for hearings before the SBOE. In 1996, the SBOE made the required rules using the emergency rulemaking procedure. Under the provisions of A.R.S. § 41-1026, the rules expired on July 30, 1996. Since then, the SBOE has functioned with procedures that have not been formally promulgated as rules. In this rulemaking, the SBOE makes the required rules.

Mara Mellstrom, Policy Advisor to the Governor, provided an exemption from Executive Order EO2016-03 by e-mail dated February 8, 2017 and Trista Guzman Glover provided an exemption from Executive Order EO2020-02 by e-mail dated on May 5, 2020.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The SBOE does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The economic impact of the rulemaking will be positive for the SBOE, petitioners, and respondents. All parties will have rules on which to rely regarding procedures before the SBOE. This will create efficiencies in functioning for the SBOE and eliminate uncertainty caused by failure to have the required procedural rules.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: George Shook

Address: 100 N 15th Ave, Suite 130, Phoenix, AZ 85007

Telephone: (602) 364-1600

Fax: (602) 364-1616

E-mail: gshook@sboe.az.gov

Website: <https://sboe.az.gov>

10. The time, place, and nature of the proceedings to make, amend, renumber, or repeal the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the supplemental proposed rule:

The board will conduct oral proceeding regarding the proposed rules as follows:

Date: Tuesday, September 29, 2020

Time: 8:30 a.m. to 11:30 a.m.

Location: 100 N. 15th Avenue, Suite 136, Phoenix, Arizona 85007

Date: Thursday October 1, 2020

Time: 8:30 a.m. to 11:30 a.m.

Location: 400 W. Congress, Suite 121, Tucson, Arizona 85701

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

None of the rules in the rulemaking requires a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No federal law is applicable to the subject on any rule in this rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

An analysis was not submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None.

13. The full text of the rules follows:

TITLE 16. TAX APPEALS

CHAPTER 4. STATE BOARD OF EQUALIZATION

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

Section

- R16-4-101. Definitions
- R16-4-102. Jurisdiction of the SBOE
- R16-4-103. Representation before the SBOE
- R16-4-104. Filing a Petition; Filing Deadlines
- R16-4-105. Motion
- R16-4-106. Hearing
- R16-4-107. On-the-record Hearing; Failure to Appear
- R16-4-108. Hearing Procedure
- R16-4-109. Rules of Evidence
- R16-4-110. Proof
- R16-4-111. Subpoenas
- R16-4-112. Records of a Hearing
- R16-4-113. Withdrawal
- R16-4-114. Ex Parte Communications
- R16-4-115. Board Decision
- R16-4-116. Review or Rehearing of the SBOE Decision
- R16-4-117. Board Member Participation in Matters before the SBOE

ARTICLE 1. PROCEDURES BEFORE THE STATE BOARD OF EQUALIZATION

R16-4-101. Definitions

“Assessor” means the county assessor of the county in which the property at issue in an appeal is located.

“Department” means the Arizona Department of Revenue.

“Motion” aside from parliamentary procedures, “motion” means a written or oral request to the SBOE for an order or ruling regarding an appeal.

“On-the-record” means a hearing conducted by reviewing submitted materials rather than taking oral testimony.

“Petitioner” means a taxpayer or other person, as defined at A.R.S. § 1-215, qualified to file an appeal and appear before the SBOE and, if applicable, an authorized representative of the taxpayer.

“Respondent” means a person or entity qualified to answer an appeal filed by a petitioner.

“Review” means a quasi-judicial consideration of an appeal or petition.

“SBOE” means:

The State Board of Equalization,

A member of the SBOE,

A panel of members of the SBOE, or

A hearing officer employed by the SBOE under A.R.S. § 41-16155 to hear appeals.

R16-4-102. Jurisdiction of the SBOE

A. The SBOE hears appeals regarding the valuation or legal classification of real and certain personal property made by the assessor or the Department.

- B.** The SBOE hears appeals from petitioners regarding the following:
1. A.R.S. § 42-15105. A notice from the assessor regarding valuation or legal classification of new construction, property assessment changes, or changes in use of real property;
 2. A.R.S. § 42-16053. The rejection by the assessor of a petition for failure to include substantial information;
 3. A.R.S. § 42-16056. The taxpayer's right to appeal the decision by the assessor for a petition for review of valuation or legal classification;
 4. A.R.S. § 42-16157 or 42-16158. An appeal of the annual valuation or legal classification of property as determined by the assessor or the Department;
 5. A.R.S. § 42-16252: The review of a Notice of Proposed Correction issued by the assessor or the Department regarding a property valuation or legal classification;
 6. A.R.S. § 42-16254: The review of failure to agree on a Taxpayer Notice of Claim regarding an error in valuation or legal classification by the assessor or the Department;
 7. A.R.S. § 42-19052: The valuation or legal classification by the assessor of personal property; and
 8. A.R.S. § 42-19156: The valuation by the assessor of a mobile home.
- C.** The SBOE hears an appeal from an assessor under A.R.S. § 42-16159 regarding an equalization order issued by the Department.
- D.** The SBOE hears an appeal from the Department under A.R.S. § 42-16157 regarding a proposed valuation or legal classification or change in a valuation or legal classification made by the assessor.
- E.** If the SBOE lacks jurisdiction regarding an appeal, the SBOE shall dismiss the appeal on its own motion. The said rejection notice will be a decision by the Board and shall be issued in compliance with all statutory deadlines and preserving any taxpayer's rights to further appeal.

R16-4-103. Representation before the SBOE

The following individuals may appear before the SBOE:

1. An individual representing:
 - a. The individual's interest,
 - b. An estate or trust of which the individual is the legal representative,
 - c. A partnership of which the individual is a partner, or
 - d. A corporation of which the individual is an officer or an authorized representative,
2. An attorney licensed to practice law in Arizona;
3. A property tax agent, as defined at A.R.S. § 32-3651, who has been designated under A.R.S. § 42-16001;
4. An authorized representative from the assessor's office;
5. An authorized representative from the Department; and
6. Other individuals allowed under Arizona Supreme Court Rule 31(d)(13).

R16-4-104. Filing a Petition; Filing Deadlines

A. To initiate an appeal under R16-4-102(B), a petitioner shall submit a petition to the SBOE.

1. The petitioner shall use the correct petition form when initiating an appeal. The SBOE shall not accept a letter in place of the correct petition form. Except as noted, the correct petition forms are available on the Department's web site and from an assessor.
 - a. Under A.R.S. §§ 42-15105, 42-16053, and 42-16056, the correct petition form is ADOR 82130;

- b. Under A.R.S. § 42-16157 or 42-16158, the correct petition form is SBOE EQ200, which is available upon request from the SBOE;
 - c. Under A.R.S. § 42-16252, the correct petition form is ADOR 82179C;
 - d. Under A.R.S. § 42-16254, the correct petition form is ADOR 82179C-1; and
 - e. Under A.R.S. §§ 42-19052 and 42-19156, the correct petition form is ADOR 82530.
- 2. If the petition is made under A.R.S. § 42-15105 and is submitted to the SBOE by an authorized representative of the taxpayer, the authorized representative shall attach to the correct petition form a copy of the current form ADOR 82130AA, which is available on the Department's web site;
- 3. The petitioner shall submit the correct petition form under subsection (A)(1) as follows:
 - a. Under A.R.S. § 42-15105 or 42-16056, by U.S. Postal Service, by hand delivery to the SBOE office, or filed online using the SBOE Appeals application;
 - b. Under all other provisions, by U.S. Postal Service or hand delivery to the SBOE office.
- 4. The petitioner shall submit:
 - a. A copy of the petition originally filed with the assessor or the Department, as applicable; and
 - b. A copy of the decision by the assessor or the Department regarding the original petition.
 - c. A copy of all attachments and evidence originally filed to the assessor or to the Department.
- 5. For a petition filed electronically to the SBOE under subsection (A)(3)(a), the petitioner shall submit a copy of all attachments and evidence originally filed to the assessor or to the Department to the SBOE within 5 days of the date of the electronically filed petition; otherwise the petition will be denied.

6. Evidence previously submitted to the assessor or the Department is not forwarded to the SBOE. Therefore, any evidence the petitioner wants considered shall be submitted to the SBOE by U.S. postal service, hand delivered, or by electronic document upload if available, to arrive at the SBOE office three days prior to the scheduled hearing, or provided at the time of hearing. The petitioner shall submit the following copies, prior to or at the hearing:

NUMBER OF COPIES:

- a. One copy of any evidence for property that is owner-occupied legal class 3 or another legal classification with a full-cash-value less than \$3 million;
 - b. Three copies of any evidence for property not described under subsection (A)(6)(a) and not valued by the Department; and
 - c. For property valued or classified by the Department under A.R.S. § 42-16158 (aka CVP property), at least 5 days before the scheduled hearing, the petitioner and respondent shall deliver evidence to the respective parties as follows:
 - i. The petitioner shall submit one copy of the evidence to the Department, and four copies to the SBOE;
 - ii. The Department shall submit one copy of evidence regarding the property valuation or classification to the petitioner and four copies to the SBOE.
7. In compliance with A.R.S. § 42-16056 the SBOE shall consider only issues previously raised with the assessor or the Department, as applicable (see A.R.S. 42-16051 et al for qualifying basis). The SBOE shall admit new or additional evidence only if:
 - a. The evidence directly relates to an issue previously raised with the assessor or the Department, as applicable;
 - b. Except as provided in subsection (A)(6)(c), a copy of the new or additional evidence is provided to the assessor or the Department, as applicable; and

- c. Amended income information, including an amended form ADOR 82300, and the appropriate income and expense form, which are available on the Department's web site, are provided to the assessor at least five days before the scheduled hearing.
- 8. Under the following circumstances, the SBOE will consider requests for multiple dockets or petitions to be heard together. The request must be made in writing, clearly identify all parcel numbers to be included and identify the qualifying basis (see A.R.S. 42-16051 et al) for the type of request described below:
 - a. The multiple parcels constitute a single economic unit;
 - b. The multiple petitions being appealed are a singular argument for all parcels;
 - c. The petitioner desires to hear multiple petitions on a single day's agenda;
 - d. The assessor's decision is for multiple parcels and the petitioner wants them heard together as a single appeal.
- 9. The petitioner shall comply with all statutory requirements, including the time within which to file a petition.
- B.** To initiate an appeal under R16-4-102 (C) or (D), the Department or assessor shall submit a petition and proof of service of the appeal on the respondent to the SBOE before the date of the scheduled hearing.
- C.** The time-period within which to file a petition is written in the statutes. It is the petitioner's responsibility to ensure a petition is timely filed.
 - 1. The SBOE shall compute the period for filing a petition according to A.R.S. § 1-243.
 - 2. The SBOE shall consider a petition timely filed if the petition is properly directed to the SBOE office and:
 - a. Is received in the SBOE office before the end of the time-period;
 - b. Is postmarked on or before the end of the time period; or

- c. Contains an electronic date that is on or before the end of the time-period.
- D. The SBOE shall respect a designation of confidentiality previously found by the assessor, county board, or the Department, as applicable. However, both evidence and testimony provided for Board consideration is, upon submission, rendered public information.

R16-4-105. Motions

A. A party shall:

1. Serve a copy of any motion on all other parties. The party shall ensure a motion includes the factual and legal grounds supporting the motion and the requested action; and
2. Unless the motion is made at the time of a scheduled hearing, submit proof of service on the other parties to the SBOE.

B. A party may file a response stating any objection to the motion served under subsection (A).

C. The SBOE, in its discretion, shall:

1. Decide whether to allow oral argument regarding a motion; and
2. Decide whether to rule on a motion before or during a scheduled hearing. If the SBOE rules on a motion before a scheduled hearing, the SBOE shall serve the written ruling on all parties.

R16-4-106. Hearing

A. As required under A.R.S. § 42-16163, the SBOE shall mail notice of an appeal hearing to all parties at least 14 days before the hearing. The SBOE shall include in the notice the date, time, and location of the hearing.

B. Before a scheduled hearing, all members of the Board shall make known, as defined at A.R.S. § 38-502, whether the member has a substantial interest, as defined at A.R.S. § 38-

502, in the matter to be heard by the SBOE. As required by A.R.S. § 38-509, the SBOE shall maintain the disclosure documents and make them available for public inspection.

- C. When the SBOE determines it is in the interest of the parties and the state, the SBOE shall allow one or all parties to participate in a hearing telephonically.

R16-4-107. On-the-record Hearing; Failure to Appear

- A.** The SBOE shall conduct a hearing entirely on-the-record, for the convenience of the board, and only if all parties to the hearing agree.
- B.** If all parties agree to an on-the-record hearing, the SBOE shall review the evidence submitted by the parties, read the evidence into the record, and render a decision based on the submitted evidence.
- C.** If the parties do not agree regarding an on-the-record hearing, the SBOE shall:
 - 1. Review the evidence submitted by the parties;
 - 2. Take oral testimony from or on behalf of the party opposing the on-the-record hearing; and read the evidence into the record beginning with testimony by the petitioner, if present, or such submitted evidence followed by the testimony by the respondent, if present, or such submitted evidence; and
 - 3. Render a decision based on both the submitted evidence and oral testimony.
- D.** If a party fails to appear at a scheduled hearing, the SBOE shall conduct the hearing as described in subsection (C).
- E.** Consistent with R16-4-108(B), under both subsections (B) and (C), the SBOE shall ensure the petitioner's evidence is entered in the record before the respondent's evidence is entered in the record.

R16-4-108. Hearing Procedure

- A.** Unless otherwise provided by law, all SBOE hearings are open to the public.
- B.** At a hearing, the SBOE shall ordinarily proceed as follows:
1. Identification for the record of the docket number of the proceeding, the parcel number or account number of the property at issue, if applicable, the ownership of the subject property, the Board members and parties participating in the proceeding;
 2. Administration of oath or affirmation to all parties and witnesses who will offer testimony;
 3. Opening statements by all parties, if requested by the SBOE;
 4. Presentation of testimony and evidence by the petitioner and witnesses;
 5. Presentation of testimony and evidence by the respondent and witnesses;
 6. Questions by the Board; final arguments, if requested by the Board;
 7. Petitioner's rebuttal; and
 8. Board deliberation, motion, and decision;
 9. The decision of the Board shall include the full cash value, the applicable limited property value or limited property value rule, the legal classification or applicable legal classification allocation, and the assessment ratio. If a mixed assessment ratio is required, all parties shall agree to the allocation of the ratios.
- C.** The SBOE may direct a party to submit additional information in the party's possession or control. The SBOE shall allow the party a reasonable time in which to submit the additional information.
- D.** The SBOE may recess or continue a hearing for good cause.
- E.** As required by law, the SBOE shall conduct all deliberation verbally in the presence of all parties in attendance at the hearing.

R16-4-109. Rules of Evidence

- A.** The SBOE shall accept oral evidence only when presented under oath or affirmation.
- B.** The SBOE is not required to follow rules of evidence usually used in a court proceeding.
- C.** The SBOE shall admit evidence the SBOE determines is consistent with R16-4-104(A)(6) and relevant to the proceeding. The SBOE shall be liberal in admitting evidence and consider objections to the admission in assigning weight to the evidence.
- D.** At the Board's discretion, parties may call and examine witnesses, cross-examine witnesses, and introduce written evidence relevant to the proceeding.
- E.** The SBOE may call and examine a witness and may examine a witness called by a party.
- F.** The SBOE shall admit into evidence a copy of an original document if there is a showing of authenticity.

R16-4-110. Proof

Unless otherwise provided by law:

1. The standard of proof in a hearing before the SBOE is a preponderance of the evidence;
2. The petitioner has the burden of proof; and
3. The proponent of a motion shall establish the grounds to support the motion.

R16-4-111. Subpoenas

- A.** The SBOE may issue subpoenas for the attendance of a witness or production of books, records, documents, or other evidence that is not confidential or privileged.
- B.** The SBOE may issue a subpoena at its discretion or upon written request by a party. A party shall include the following in a written request for a subpoena:

1. Identification of the property, including parcel number if applicable, at issue;
 2. A list or description of all records sought;
 3. A statement showing proper foundation for the request;
 4. The name and address of the custodian of the records sought or all persons to be subpoenaed;
 5. The date, time, and place to appear or to produce the records; and
 6. The name, address, and telephone number of the party requesting the subpoena.
- C.** If the SBOE issues a subpoena upon the request of a party, the requesting party shall:
1. Ensure the subpoena is served no later than five business days before the time specified in the subpoena for attendance of a witness or production of records;
 2. Ensure the person serving the subpoena provides proof of service to the SBOE; and
 3. Pay the cost to serve the subpoena.

R16-4-112. Records of a Hearing

- A.** The SBOE shall make a recording of every hearing. If a person makes a request, the SBOE shall provide a copy of a hearing recording on its website, or any other electronic means, within one business day after the hearing. If the person wants a copy of the hearing recording in another format, the SBOE may charge the cost of providing the copy in the other format.
- B.** A party to a proceeding may, at the party's expense, record the proceeding using a recording device or court reporter.
- C.** Subject to the limits imposed at A.R.S. § 39-121.03, a person may submit a written request to examine or be furnished a copy of a public record in the custody of the SBOE. As allowed under A.R.S. § 39-121.01, the SBOE may charge a fee for providing a copy of a public record.

D. While examining a public record, a person shall not remove the public record from the SBOE office.

R16-4-113. Withdrawal

- A. The petitioner may withdraw an appeal by providing written notice to the SBOE at least 48 hours before the scheduled start of the hearing.
- B. If the petitioner submits a written notice of withdrawal to the SBOE fewer than 48 hours before the scheduled start of a hearing, the SBOE shall accept the notice of withdrawal at the hearing.
- C. The petitioner may withdraw an appeal by providing written or oral notice to the SBOE at the hearing.

R16-4-114. Ex Parte Communications

- A. A party shall not communicate, either directly or indirectly, with a member of the SBOE about a substantive issue in a pending appeal unless:
 - 1. All parties are present,
 - 2. It is during a scheduled hearing where an absent party fails to appear after proper notice, or
 - 3. It is by written motion where a copy is provided to all parties.
- B. If a member of the SBOE is determined to have received ex parte communication regarding an appeal, the member shall be recused from participating in the appeal.

R16-4-115. Board Decision

- A.** The SBOE shall issue a written decision within a reasonable time after the hearing or, as authorized under A.R.S. § 42-16164, after continuing the hearing for additional deliberation.
- B.** In its decision, the SBOE shall include the following:
1. Docket number of the appeal;
 2. Parcel number or other identification of the property at issue;
 3. Separately stated findings of fact and conclusions of law;
 4. The decision regarding the property valuation or classification;
 5. Other matters before the SBOE related to the appeal; and
 6. The right of an aggrieved party to appeal the SBOE's decision under A.R.S. § 42-16203 or 42-16254(G).
- C.** The SBOE shall mail a copy of the written decision to all parties and to the Department.
- D.** The SBOE's decision is final 60 days after it is mailed under subsection (C) unless an appeal is taken under A.R.S. § 42-16203 or 42-16254(G).

R16-4-116. Review of a SBOE Decision

- A.** As provided under A.R.S. § 42-16164(A), the chairman of the SBOE may review a SBOE decision to ensure the decision is consistent with due process for all parties. In conducting the review, the chairman shall assess whether:
1. The findings of fact, conclusions of law, and decision are supported by the evidence or are contrary to law;
 2. The hearing involved irregularity, abuse of discretion, or misconduct by a party;
 3. The hearing involved accident or surprise that could not have been prevented by ordinary prudence;

4. Newly discovered material evidence exists that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurred at the hearing or during the progress of the proceedings;
 6. The decision was the result of passion, bias, or prejudice; or
 7. The decision was arbitrary and capricious.
- B.** The Chairman shall complete the review provided under A.R.S. § 42-16164(A) within 30 days after the decision is issued under R16-4-115.
- C.** If the Chairman determines the SBOE decision is inconsistent with due process for all parties, the SBOE shall:
1. Provide written notice of this determination to all parties including the grounds listed in subsection (A) on which the determination is based;
 2. Stay enforcement of the SBOE's decision issued under R16-4-115 pending further review of the decision; and
 3. Within 30 days after providing the notice under subsection (C)(1), take additional testimony or review newly discovered material evidence, amend findings of fact or conclusions of law or make new findings or conclusions, and issue a new decision.
- D.** Under A.R.S. § 42-16169, the written decision issued under subsection (C)(3) becomes final 60 days after it is mailed to all parties and the Department.

R16-4-117. Board Member Participation in Matters before the SBOE

- A.** A member of the SBOE shall comply with A.R.S. Title 38, Chapter 3, Article 8, regarding conflicts of interest. This requires, among other things:
1. Refraining from participating in any manner in a SBOE decision regarding property in which the member or the member's relative has a substantial interest; and

2. Refraining from participating in any manner in a SBOE decision regarding a petition submitted to the SBOE by an entity in which the member or the member's relative has a substantial interest.
- B.** Remedies and penalties for violating A.R.S. Title 38, Chapter 3, Article 8 are specified at A.R.S. §§ 38-506 and 38-510.
- C.** Members of the SBOE shall comply with the Open Meeting Laws of Arizona.